



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

[Docket DARS-2019-0049]

RIN 0750-AK14

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Payment for Subline Items Not Separately Priced" (DFARS Case 2018-D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to clarify its intent and conform its language to current DFARS terminology, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 84 FR 58362 on October 31, 2019, to modify DFARS clause 252.207-7002, Payment for Subline Items Not Separately Priced, to conform the text of the clause to the current contract line item structure terminology by replacing "contract line item" with "contract line or subline item" and add a prescription for the DFARS clause in the applicable section of DFARS 204.71. No public comments were received in response to the proposed rule. No changes are made in the final rule from the proposed rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, including Commercially Available Off-The-Shelf Items

This rule does not create any new provisions or clauses. The rule updates language used in the clause text to conform with current contract line item structure terminology. This rule does not change the applicability of the affected clause.

III. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.204-7002, Payment for Subline Items Not Separately Priced, to simplify and conform the clause text to current Government contract line item structure terminology.

The objective of this rule is to clarify the intent of the clause for contractors, when submitting invoices under contracts that contain items that are not separately priced. The modification of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. No public comments were received in response to the initial regulatory flexibility analysis.

Based on an average of data for fiscal year 2016 through 2018 from the Federal Procurement Data System and Electronic Document Access, DoD awards approximately 12,435 contracts annually that includes the DFARS clause 252.204-7002. Of the 12,435 awards, approximately 4,924 contracts (40%) are awarded to 1,564 unique small business entities. Based on the available data and the objective of the rule, DoD does not anticipate that this proposed rule will significantly impact small business entities. This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

2. Amend section 204.7104-1:

- a. In paragraph (b) (3) (iii), by removing "subsection" and adding "section" in its place; and
- b. By revising paragraph (b) (3) (iv).

The revision reads as follows:

204.7104-1 Criteria for establishing.

* * * * *

(b) * * *

(3) * * *

(iv) When the price for items not separately priced is included in the price of another contract line or subline item, it may be necessary to withhold payment on the priced contract line or subline item until the included line or subline items that are not separately priced have been delivered. See the clause at 252.204-7002, Payment for Contract Line or Subline Items Not Separately Priced.

3. Revise section 204.7109 to read as follows:

204.7109 Contract clauses.

(a) Use the clause at 252.204-7002, Payment for Contract Line or Subline Items Not Separately Priced, in solicitations and

contracts when the price for items not separately priced is included in the price of another contract line or subline item.

(b) Use the clause at 252.204-7006, Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108(b) (2); or

(2) Other payment instructions, in accordance with PGI 204.7108(d) (12), that require contractor identification of the contract line item(s) on the payment request.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Revise section 252.204-7002 to read as follows:

252.204-7002 Payment for Contract Line or Subline Items Not Separately Priced.

As prescribed in 204.7109(a), use the following clause:

PAYMENT FOR CONTRACT LINE OR SUBLINE ITEMS NOT SEPARATELY PRICED (APR 2020)

(a) If the schedule in this contract contains any contract line or subline items identified as not separately priced (NSP), it means that the unit price for the NSP line or subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for an item that includes in its price an NSP item until—

(1) The Contractor has also delivered the NSP item included in the price of the item being invoiced; and

(2) The Government has accepted the NSP item.

(c) This clause does not apply to technical data.

(End of clause)

252.204-7006 [Amended]

5. Amend section 252.204-7006 introductory text by removing "204.7109" and adding "204.7109(b)" in its place.

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